

Will Stutesman

McGowan v Stutesman, et al.

October 19th, 2017



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Eugene Division

RONDA MCGOWAN, Personal)
Representative for Estate of)
Brian Babb, LEE BABB, CONNOR)
BABB, by and through Guardian)
ad litem, STEPHANIE WOODCOOK,)
KAYLEE BABB,)
Plaintiffs,)
v.) No. 6:17-cv-00424-TC
WILL STUTESMAN, OFFICER GROSE,)
OFFICER PIESKE, Sgt. MCALPINE,)
CITY OF EUGENE, a municipal)
subdivision of the State of)
Oregon, JANE DOE CALL TAKER,)
John and Jane Does 1-10,)
Defendants.)

DEPOSITION OF WILL STUTESMAN

October 19, 2017

Thursday

1:52 P.M.

THE VIDEOTAPED DEPOSITION OF WILL STUTESMAN
was taken at Harrang Long Gary Rudnick, 360 East
10th Avenue, Suite 300, Eugene, Oregon, before
Christine Oljace, CSR, RPR, CRC, Certified Shorthand
Reporter in and for the State of Oregon.

1
2 APPEARANCES

3 For the Plaintiffs:

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13 541/485-0220
14 BY: MR. JENS SCHMIDT
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16 Also Present:

17 LEE BABB
18 STEPHANIE WOODCOOK
19 MS. JAMIE IBOA
20 NATHAN PIESKE
21 MATTHEW GROSE
22 MALCOLM McALPINE

23 Videotaped by: DAVID McGINNIS

24 Reported by: CHRISTINE OLJACE, CSR-RPR

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EUGENE 541/485-0111

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1 THE VIDEOGRAPHER: Good afternoon.
2 Today's date is August 19, 2017. The time is
3 1:52 p.m.

4 I ask now if the court reporter would
5 please swear in the witness.

6

7 WILL STUTESMAN,
8 having been first duly sworn to testify the truth,
9 the whole truth, and nothing but the truth, was
10 examined and testified as follows:

11

12 | EXAMINATION

13 | BY MS. BURROWS:

14 Q. Officer Stutesman, can you state your name
15 for the record, please?

16 A. Will Stutesman.

17 Q. And you are a police officer with the
18 Eugene Police Department?

19 A. Tam.

20 Q. So you are the latest in three weeks of
21 witnesses, so you have heard all of the admonitions
22 and instructions and background?

23 A. Yes.

24 0. Have you missed any depositions?

25 A. Some of the neighbors and the dispatcher.

1 call taker depositions so --

2 Q. Do you have any questions about the
3 instructions or what we are going to do now?

4 A. No.

5 Q. Okay. I am not going to give them all to
6 you --

7 A. Okay.

8 Q. -- again other than offer you the
9 opportunity to read and sign the transcript once it
10 is created.

11 In addition, you are being videotaped
12 today, along with the transcript, and both will be
13 created and are available to use later in future
14 proceedings.

15 A. Okay.

16 Q. Have you ever had your deposition taken
17 before?

18 A. No.

19 Q. Well, I don't have to tell you how it is
20 going to go, because you have watched a number of
21 them.

22 Beyond the deposition testimony that you
23 have heard of your fellow officers, have you or --
24 have you spoken with any of them about the
25 deposition or the incident other than in meetings

1 with your lawyer?

2 A. About the depositions, no, other than in
3 with Counsel.

4 Q. Okay. Have you spoken with any of your
5 fellow officers about the March 30th incident?

6 A. We had a critical incident debrief several
7 months afterwards. I don't remember the exact date
8 or time that was held.

9 Q. So Officer Grose testified he thought that
10 was sometime in the fall of 2015. Is that the same
11 debrief you are talking about?

12 A. Yes.

13 Q. And do you remember any notes or reports
14 or information handed out or distributed at that
15 debriefing?

16 A. I don't, and I don't believe there was
17 anything that was handed out or notes taken.

18 Q. And Officer Grose recalled that there were
19 dispatch recordings played during that debriefing.
20 Do you recall that as well?

21 A. I do.

22 Q. Was there anything else that may have been
23 demonstrated to the group that may not have been
24 handed out, but something that may have been
25 demonstrated? Pictures? Maps? Anything like that?

1 A. There -- there may have been some pictures
2 or maps along with the audio of the dispatch tapes.
3 Oftentimes with these critical incident debriefs,
4 some of those tools are used to assist with these
5 kinds of things.

6 Q. Okay. Did you review any records in
7 preparation for your deposition?

8 A. I did.

9 Q. And I want to make sure I say it broadly
10 enough. Did you review any materials -- and by
11 review, hear, watch, look at, read. Anything like
12 that?

13 A. I reviewed the pack of materials that was
14 provided by my attorney, which included the black
15 and white color -- or sorry -- black and white
16 pictures, aerial photographs of the area, portions
17 of the IDFIT report, which included my statement and
18 other officers' statements that have been deposed,
19 and then the Use of Force Review Board memo --

20 Q. Okay.

21 A. -- that was produced.

22 Q. Did you review any videos?

23 A. Yeah. I reviewed the BearCat in-car
24 video.

25 Q. Okay. I just had a thought.

1 You said that you have never been deposed
2 before. Is that correct?

3 A. Correct.

4 Q. But you have testified in court before?

5 A. I have.

6 Q. Okay. So the act of testifying is not
7 unusual to you?

8 A. Correct.

9 Q. Are you feeling okay today?

10 A. I am.

11 Q. All right. Are you nervous?

12 A. Yeah.

13 Q. Okay. I don't want you to be nervous
14 so -- I can get a sense from you you are a little
15 bit nervous right now.

16 So in the materials that you reviewed, did
17 you review the statements, the narrated statements
18 of all of the officers who have already testified in
19 these depositions?

20 A. Yes, I did.

21 Q. All right. When was the last time you
22 reviewed your statement?

23 A. It would have been earlier this morning.

24 Q. Earlier when?

25 A. This morning.

1 Q. This morning? All right.

2 And prior to this morning, when was the
3 last time you looked at it?

4 A. I am not sure. It would have been over
5 the last couple weeks.

6 Q. Okay. Did you at any -- and because you
7 have sat in on all these depositions and there has
8 been an awful lot of testimony gathered, at any
9 point during the last three weeks did you go home
10 and review anybody's records because of something
11 that was said in the deposition?

12 A. No. I don't believe there was any
13 specific testimony that caused me to review the --
14 any reports again.

15 Q. Okay. We have the notebook of exhibits
16 here, and I might ask you just simply to review some
17 of the same exhibits we have been looking at
18 before --

19 A. Okay.

20 Q. -- with all of the other witnesses. The
21 dispatch record is at the very bottom, Exhibit 7.

22 What was your call sign that day?

23 A. I will have to look and double-check, but
24 I believe it was 3E56. 3 Edward 56.

25 Q. And again, with the same sort of provisos

1 that I used with Officer Grose, I understand that
2 there may be -- these dispatch records may not be
3 precise in the time that the events happened, so
4 given that proviso -- and I accept that -- can you
5 evaluate on Exhibit 7 when you recall first being
6 dispatched to this call at the Devos Street address?

7 A. Yes.

8 Q. Either self-dispatched or somebody sent
9 you.

10 A. Okay. Looks like the first time I'm
11 mentioned is on page 4 of 11, very bottom line.
12 3E56 dispatched at 5:07.

13 Q. How long have you been a police officer?

14 A. Since August of 2009.

15 Q. At Eugene Police Department?

16 A. Yes.

17 Q. Did you work at any other agency prior to
18 EPD?

19 A. I worked at the Lane County Sheriff's
20 Office as a corrections deputy from 2006 to 2008.

21 Q. And prior to Lane County?

22 A. No.

23 Q. When did you graduate from high school?

24 A. 1999.

25 Q. What did you do between 1999 and 2006?

1 A. Construction, logging jobs. Did that for
2 quite a while. Got married and had a family.

3 Q. What made you decide to go into law
4 enforcement?

5 A. It's something I have always wanted to do,
6 been interested in. I kind of finally decided that
7 I wasn't getting any older, and if I didn't try --
8 start applying myself and trying to apply with the
9 different agencies, that I would never have the
10 chance. So kind of part of the first part of that
11 was the job I had at the time. I was out of town
12 all of the time, never home, so I got a job where I
13 was home more often and started volunteering for the
14 fire department out where I lived and -- in Dexter.
15 And I did that for a couple years and was finally
16 able to get hired with the sheriff's office as a
17 corrections deputy.

18 Q. You were a volunteer firefighter in
19 Dexter?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes. Sorry.

23 Q. Okay. Did you also become a medic?

24 A. No.

25 Q. So what state certifications do you hold?

1 Do you have a corrections certification?

2 A. I did. I believe that's since lapsed.

3 And I currently have basic police certifications.

4 Q. Did you have to get a firefighter
5 certification to be a volunteer?

6 A. That was part of the process of going
7 through -- I don't remember if I ever was there long
8 enough to complete the entire packet to become a
9 certified firefighter, I guess.

10 Q. But you had started it?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. And then why did you start at Lane County
15 in the corrections? Was it just because that was a
16 job that was open?

17 A. Partly. Partly also it was kind of a foot
18 in the door, a place to start. It was local, so I
19 wouldn't have to move my family out of the area.

20 Q. You said that you left in 2008. Was that
21 to take a job at Eugene?

22 A. I was laid off due to budget cuts.

23 Q. Oh, okay. And how did you get on with
24 Eugene then?

25 A. Through the application process. I was --

1 in between the time I got laid off and when I got
2 hired with Eugene, I was off for about a year and a
3 half, so I went back to working construction jobs
4 when they were available or kind of whatever I could
5 do in between.

6 Q. Okay. And you were hired, then, I take it
7 at Eugene before you went to the academy?

8 A. Yes.

9 Q. Did you go to DPSST?

10 A. Yes.

11 Q. And what is your highest level of
12 certification right now?

13 A. Basic police.

14 Q. Okay. What specialty team -- I know you
15 are on SWAT, but besides SWAT what other specialty
16 teams have you worked on with Eugene?

17 A. I have done park patrol occasionally.
18 Otherwise just a patrol officer. There was a street
19 crimes team that ran for a couple months a couple
20 years ago that was a handful of officers on
21 different shifts that were basically focused on
22 prolific offenders, and I was part of that. And
23 that was just a temporary assignment.

24 Q. Okay. Have you ever been an FTO?

25 A. I just recently began being an FTO.

1 Q. When did you start working as an FTO?

2 A. A month or two ago.

3 Q. Okay. Oh, you are brand new.

4 A. So very recent, yes.

5 Q. So you have just had your first recruits
6 assigned to you?

7 A. Yeah. I just had my first recruit for
8 about a month before he was scheduled to go up to
9 the academy.

10 Q. How is that going?

11 A. Good so far.

12 Q. You like it?

13 A. Uh-huh.

14 Q. All right.

15 A. Yes.

16 Q. And then consistently since 2009 you have
17 always been a patrol officer?

18 A. Yes.

19 Q. Okay. And how long have you been on the
20 SWAT team?

21 A. Since 2014.

22 Q. So about three years?

23 A. Yeah.

24 Q. Yes?

25 And at the time of the March 30th

1 incident, how long had you been on there?

2 A. Right about a year.

3 Q. Okay. And I have heard from various
4 officers -- and tell me if you agree with this --
5 that you were a sniper.

6 A. No, I am not.

7 Q. Okay. I apologize. I misunderstood it.

8 Did you have a particular position or role
9 that you filled on the SWAT team?

10 A. No. We are trained to basically fulfill
11 all of the roles on the team currently. The sniper
12 position is a separate position that requires
13 additional training.

14 Q. Okay. Have you ever been a sniper?

15 A. No.

16 Q. At the -- on the March 30th incident, I
17 saw from the roster that there were a number of SWAT
18 officers there. Besides yourself, do you remember
19 which other officers present on March 30th were SWAT
20 officers?

21 A. I remember Sergeant McAlpine, Sergeant
22 Vinje, Officer Farley, and Officer Kidd, and Officer
23 Warden.

24 Q. Okay. Of those officers, do you recall
25 who had received the sniper training?

1 A. Officer Farley and Officer Kidd.

2 Q. Okay. Do you know why you were placed in
3 the turret of the BearCat that day versus Kidd or
4 Farley?

5 A. From our discussions that we had had kind
6 of while we were at the driveway, we knew that Kidd
7 and Farley were going to try and gain observation of
8 the house somewhere else, you know, see if they
9 could get a better view of the house while we were
10 waiting for the BearCat to arrive.

11 When the BearCat arrived, they were
12 already out in their positions looking -- you know,
13 trying to find a better view of things. So I was
14 there with my rifle. I am assuming that is why I
15 was asked to get in the turret, in the hatch, to be
16 able to have that overwatch position so we could see
17 over those fences.

18 Q. And when you were placed in the turret
19 position by Sergeant McAlpine, did you understand
20 that you might have to shoot someone?

21 A. That is always a possibility in our job.

22 Q. Okay. And the -- Officer Kidd was placed
23 at least on one rooftop position, and I believe
24 Officer Grose told us that he thought Farley was
25 en route or in process of taking another rooftop

1 position. Do you remember that as well?

2 A. Yes.

3 Q. Okay. Could you see where Farley was --

4 A. No.

5 Q. -- from the turret?

6 A. I could not see where Farley was.

7 Q. Okay. Could you see Officer Kidd from the
8 turret position?

9 A. I could.

10 Q. And you heard his description of where he
11 was located on that 2244 rooftop?

12 A. I did.

13 Q. Did you see him change position at all
14 during that evening time period?

15 A. I could hear, and he had also -- we were
16 talking back and forth occasionally, because we
17 could communicate -- we were close enough together
18 we could talk back and forth, too, instead of tying
19 up the radio traffic sometimes. But I could hear
20 him trying to move around on the roof to see if he
21 could get a better position or less-exposed position
22 on the roof --

23 Q. Okay.

24 A. -- once he was there.

25 Q. And you could actually yell up at him on

1 the roof and talk to him?

2 A. Yes.

3 Q. Okay. At -- on the time of this incident,
4 what beat were you working?

5 A. Beat 5.

6 Q. Beat 5? And what shift were you working
7 at that time?

8 A. Third watch, which is --

9 Q. Third watch?

10 A. -- 11 a.m. to 9 p.m. Sunday through
11 Wednesday.

12 Q. And presently what watch are you working?

13 A. The same shift.

14 Q. Same?

15 Are you the same beat?

16 A. No.

17 Q. What beat are you on now?

18 A. Beat 2, which would be downtown.

19 Q. Okay. You -- we were on the dispatch
20 record, and you recall being called out or
21 dispatched at 5:07?

22 A. Yes. That is what the record indicates
23 here.

24 Q. Did you self-dispatch or did someone --

25 A. Yes, I self-dispatched.

1 Q. Okay. And at 5:07 -- I have asked every
2 officer this, so you know what I am about to ask
3 you -- do you recall what information you had about
4 the call you were going to on Devos Street?

5 A. I believe on the initial dispatch,
6 Station 1 asked for the -- I believe it was Officer
7 Barnes and then for any other unit that could clear
8 and assist for an armed, suicidal subject that
9 possibly had a gun to his head. That is -- when I
10 copied up, I was right at ECU writing reports next
11 to Officer Barnes. And several other officers
12 copied up with that information and began going --
13 going to the call.

14 Q. When you use the term "copy up," what do
15 you mean?

16 A. Get on the radio and say that they are
17 en route.

18 Q. Okay.

19 A. So self-dispatched themselves.

20 Q. So how many officers were with you in the
21 office when that call came over the radio?

22 A. I was in my car writing a report.

23 Q. Oh.

24 A. So I was in the car by myself. I knew
25 Officer Barnes was at ECU. I don't know if she was

1 inside writing the report or if she was in her car.
2 And I don't remember how many other people were
3 there, if any.

4 Q. And from the 5:07 time, then you
5 immediately took off towards --

6 A. Yes.

7 Q. -- the call?

8 A. Yes.

9 Q. Okay. Did you know Mr. Babb prior to this
10 call?

11 A. No.

12 Q. Did you know Ms. Woodcook?

13 A. No.

14 Q. Do you know if your wife knows her?

15 A. I don't think my wife does.

16 Q. Okay. Let's look at Exhibit 16, which is
17 the Google maps picture.

18 A. Okay.

19 Q. Could you tell me where you parked when
20 you arrived at Devos Street?

21 A. So I parked off to the southeast on Cody,
22 kind of back a little ways on Cody from east of
23 Devos.

24 Q. Okay. And then you approached the
25 residence or the location on foot?

1 A. Yes.

2 Q. Were you alone?

3 A. Officer DeWitt pulled up about the same
4 time I did. He parked right behind me.

5 Q. And did you walk up together?

6 A. Yes.

7 Q. When you got to Devos Street, were there
8 any patrol vehicles parked at the end of the street?

9 A. I don't remember. I don't specifically
10 remember seeing where other patrol vehicles were
11 parked on Devos.

12 Q. Okay. Describe your route for me up to
13 the 2244 address.

14 A. I just walked west to Devos. I think we
15 walked to the west side of Devos Street and then
16 north until we met up with Officer Kidd somewhere
17 here at the 2244 Devos. And I am not sure if we
18 came into the driveway or if we stood back here a
19 little ways. It was right in this general area of
20 the 2244.

21 Q. In the front yard?

22 A. Yeah.

23 Q. Okay. So it is Kidd, DeWitt, and you in
24 the front yard at that point?

25 A. Yes.

1 Q. Did you see any other officers present at
2 or near that location?

3 A. Not initially.

4 Q. Okay. And you said that Officer Barnes --
5 you knew that she was at some point en route. Is
6 that correct?

7 A. Yes.

8 Q. Did you see her at anytime in the
9 location?

10 A. I don't remember seeing her initially.

11 Q. Initially. At some point, though, did you
12 see her?

13 A. Yes.

14 Q. Where was she when you saw her the first
15 time?

16 A. When I saw her the first time it was
17 after -- after the shot had been fired and I was
18 walking back to the street, and she was back here.

19 Q. Okay. I am going to ask you the same
20 thing I have asked other officers to see if anybody
21 knows what is going on. As you may or may not know,
22 a couple of neighbors have told us that an officer
23 went to their front door to tell them to shelter
24 inside. Did you see officers do that with any of
25 the neighbors?

1 A. No, I did not see any officers do that.

2 Q. Were there any officers in plainclothes
3 there that day that you know about?

4 A. None that I knew about or remember.

5 Q. Okay. Do you have any idea who may have
6 gone up to these folks's house and --

7 A. I don't.

8 Q. -- said, "We are the police; stay inside"?

9 A. No.

10 Q. Okay. And you didn't do that, did you?

11 A. No.

12 Q. All right. So I am trying to do a
13 timeline, so let's just walk through it a little
14 bit. You -- can you tell me -- if you need to flip
15 through the dispatch record again, do that.

16 A. Okay.

17 Q. My next piece of information I would like
18 from you is when we know you arrived approximately,
19 and besides the other two officers with you, who
20 were the next officers you saw arrive?

21 A. So I remember -- I will have to flip
22 through for the timeline. I remember at some point
23 Sergeant McAlpine joining us here. So me, DeWitt,
24 Officer Kidd, and then Sergeant McAlpine were here
25 initially before the -- before the BearCat ever

1 showed up.

2 Q. Okay.

3 A. And I will --

4 Q. Go ahead.

5 A. -- review the records to get you about a
6 timeline on when I arrived.

7 Q. Okay.

8 A. So 3 Edward 56 arrived at 5:13 p.m. It is
9 on page 5 of 11.

10 Q. Okay. 5:13?

11 A. Yes.

12 Q. Okay. So it was about six minutes. You
13 must have been close.

14 A. Yes.

15 Q. Okay. And Kidd -- excuse me -- DeWitt
16 arrived about the same time you did?

17 A. Yes.

18 Q. And Kidd arrived shortly thereafter, or
19 was he already there?

20 A. Officer Kidd was the first one there.

21 Q. Okay.

22 A. He began giving some updates on the radio
23 as we were approaching on foot.

24 Q. And McAlpine -- can you tell by looking at
25 that when McAlpine arrived?

1 A. Looks like 3 X-ray 31 arrived at 5:19 p.m.

2 Q. So he is about six minutes after you?

3 A. Yes.

4 Q. So did anyone else arrive before McAlpine
5 got there that you recall?

6 A. I don't remember seeing any other officers
7 with us. I remember hearing other officers checking
8 out on perimeter positions.

9 Q. Okay.

10 A. But I don't specifically remember the
11 timeline of that. This record kind of shows --
12 shows when people are checking out.

13 Q. So when McAlpine gets there, he is the
14 incident commander?

15 A. Yes.

16 Q. Is that -- okay. Did he -- did you have a
17 discussion amongst -- I guess there is four officers
18 at that point.

19 A. I believe so.

20 Q. Was there a discussion about what was
21 going on and what you were going to do next, you
22 being collectively, all of you officers?

23 A. I think we were talking about trying to
24 figure out what our plan was. I don't specifically
25 remember what the discussion covered. I just

1 remember that we were kind of discussing what --
2 kind of our options and kind of what we were going
3 to do.

4 Q. What options did you all discuss?

5 A. Well, with the way the house was set up,
6 because it was a two-story house, we could see that
7 the upstairs windows -- at least one of them
8 appeared to be open. It was really dark inside, so
9 you couldn't see inside that -- inside the window
10 very well. Another one of the windows had the
11 blinds closed on it. We couldn't see anything in
12 the downstairs really, maybe the top part of the
13 window and maybe part of the door from where we
14 were.

15 With the information that he had possibly
16 already shot a round, that there was possibly a
17 roommate inside still, we wanted to try and get
18 basically eyes on all sides of the house to kind of
19 see what we had, and if somebody did decide to come
20 out quickly, we wanted to be able to see somebody
21 and address them before they kind of came around the
22 corner and surprised us.

23 Q. Okay. Go back to 16 for me, will you?

24 A. Okay.

25 Q. So at least by 5:19, McAlpine arrives and

1 you are having the discussion you have described to
2 me. Do you recall any other officers arriving in
3 that time period?

4 A. I remember hearing Officer Clark saying he
5 was arriving and going to take a position to the
6 west somewhere off of East Irwin, and Officer Barnes
7 and Officer Farley arrived somewhere to the north to
8 try and get a position from there.

9 Q. Okay. And at what point in all of this
10 discussion did the BearCat arrive?

11 A. This was a continual discussion that was
12 going on the entire incident.

13 Q. Okay. Did -- you heard Officer Grose
14 testify that he believes he got into the BearCat out
15 here on the road. Do you remember getting in the
16 BearCat when it is out on the road?

17 A. I can't remember if I got into the BearCat
18 when it was on the road or once it was parked. I
19 want to -- I want to say that we got into it while
20 it was still on the road or at least around the
21 corner, not directly in front of the house.

22 Q. Okay. Was there a discussion about where
23 to place the BearCat?

24 A. Yes.

25 Q. Tell me about that discussion.

1 A. We wanted it in a position to where we
2 would kind of have the best view of the front of the
3 house. And the -- really the way -- the layout of
4 the terrain and the other properties around here, it
5 was in the driveway here of this 2244 house, so it
6 was basically to get the BearCat pointed at the best
7 angle facing -- facing the house. And then from the
8 elevated position of the turret, once I got in
9 there, that would give us a little bit better view
10 of the front door and other things going on in case
11 somebody came out or started coming towards us. We
12 could address them from there without them coming
13 around and --

14 Q. The access to the Babb house presented
15 some tactical challenges, didn't it?

16 A. Yes.

17 Q. Why don't you explain the tactical
18 challenges that you saw and were discussed with you,
19 the officers.

20 A. So again, with it being a two-story house
21 and not sure where Mr. Babb was in the house, we
22 knew that from those second-story windows, it would
23 be very easy for anyone inside the house to see
24 where we are at. That long driveway presented the
25 same problem. There is no cover or concealment of

1 any kind really, making any approach to the house
2 difficult and extremely dangerous for a call where a
3 person had reportedly already shot a round off.

4 Q. And there were also a lot of cars and
5 trucks and things in that driveway. Is that
6 correct?

7 A. Yes. I remember the two white pickups
8 here.

9 Q. Did that present any concerns for how you
10 would access the house should you need to move the
11 BearCat forward?

12 A. I don't specifically remember us having a
13 discussion about driving up in the BearCat. That
14 wasn't really part of the initial plan at first.

15 Q. What -- so what would -- the initial plan
16 was to park in the driveway and do what?

17 A. Basically try to call Mr. Babb and anybody
18 else outside to try and resolve this peacefully.
19 Ideally -- we were having the discussion -- the
20 dispatcher was telling us that the call taker, his
21 therapist, was still on the phone with him, so there
22 was kind of some limited communication issues
23 that -- I remember Sergeant McAlpine airing some
24 requests to dispatch, and whether that got relayed
25 or not, it was hard to tell, because we got told

1 several times that dispatch just had an open line
2 with the call taker and that she was talking to
3 Mr. Babb. Later during the call I remember dispatch
4 saying that Mr. Babb wasn't responding at all to
5 the -- to the therapist at all.

6 Q. Uh-huh.

7 A. So does that answer your question?

8 Q. Yes.

9 A. I am not sure if that was a complete
10 answer or not.

11 Q. You are doing fine. You are doing fine.

12 I have gone over this story so many times
13 with so many people, it is kind of blurring a little
14 bit in my mind, and I want to make sure I get your
15 story to the best of your ability to tell it to me.

16 Who made the decision to put you in the
17 turret of the BearCat?

18 A. Sergeant McAlpine.

19 Q. Do you know why he picked you?

20 A. Not --

21 MR. SCHMIDT: Objection. Asked and
22 answered.

23 MS. BURROWS: Pardon?

24 MR. SCHMIDT: I said objection. Asked
25 and answered.

1 A. And not specifically. Kind of like I said
2 before, Officer Kidd was tasked with trying to get a
3 different view of the area. Officer DeWitt had the
4 40mm less lethal launcher. I was there with my SWAT
5 rifle.

6 BY MS. BURROWS:

7 Q. Okay. How many long rifles were there
8 present at the scene at that time, if you remember?

9 A. I don't remember. I remember I had mine.

10 Q. Okay.

11 A. And I am not -- I don't remember
12 specifically who else had theirs with them.

13 Q. The long rifles are normally kept in the
14 patrol vehicle. Correct?

15 A. Yes.

16 Q. Are they in a lockbox in the trunk or
17 somewhere else inside the vehicle?

18 A. Mine was kept in a hard rifle case in the
19 trunk of the car.

20 Q. And you had grabbed it before you left
21 your vehicle?

22 A. Yes.

23 Q. Do all officers have access to a long
24 rifle in their patrol vehicle?

25 A. No.

1 Q. What -- is there some particular criteria
2 in order to have a long rifle with you in your
3 patrol car?

4 A. Yeah. You have to go through an
5 additional long rifle training course through the
6 department to get qualified with a patrol rifle to
7 be able to carry one. And then depending on --
8 basically depending on whether the department has
9 enough, you will either be issued one of your own or
10 there are some pool rifles that are kept in the safe
11 at the police department that officers can utilize
12 during their shift.

13 Q. So the rifle you had, was that one that
14 had been issued to you?

15 A. It was through the SWAT team.

16 Q. When was the last time you had sighted it
17 in?

18 A. I don't remember.

19 Q. Are you required to sight it in regularly?

20 A. We do qualifications with them, yes.

21 Q. Maybe I should make myself a little
22 clearer.

23 So you have to qualify on the range
24 regularly with your weapons. Correct?

25 A. Yes.

1 Q. That includes your side arm and the long
2 rifle?

3 A. Yes.

4 Q. Now, the reason I am asking about sighting
5 in the rifle is that Department of Corrections has a
6 requirement that rifles used in the tower have to be
7 regularly sighted in. Is there such a requirement
8 for the long rifles that you have access to?

9 A. Not that I am aware of.

10 Q. Okay.

11 A. With the training that we do, if we feel
12 like our sighting system is off for whatever reason,
13 then we will take the time to adjust it to make sure
14 it is where we think it needs to be.

15 Q. Prior to March 30th of 2015, when was the
16 last time -- is that the right way to say that
17 sentence? What was the most recent time you had
18 used -- fired that long rifle?

19 A. I don't remember specifically. I know we
20 have -- it would have been on our SWAT training
21 days, which are typically held on the last two
22 Wednesdays of every month and -- but not all of
23 those training days were at the range. Oftentimes
24 they are different scenario training or other
25 things. So I don't remember the last time I had

1 shot it before this incident.

2 Q. Now, I know that qualifying on a weapon --
3 usually it is an annual qualification, isn't it?

4 A. I think our department is semi-annually.

5 Q. Okay. And do you, though -- other than
6 those qualification events when you qualify, do you
7 otherwise practice with the long rifle?

8 A. Yes.

9 Q. And how often would you say you do that?

10 A. Again, it varies. Being on the SWAT team,
11 we get more practice than patrol officers in
12 general, but I can't tell you specifically how --
13 how much more. But they are something that we
14 utilize, whether it is live fire at the range or
15 Simunition training, which are basically -- they are
16 like a paintball bullet that -- force-on-force
17 training --

18 Q. Okay.

19 A. -- that we use in scenarios sometimes.

20 Q. Okay. Let's talk about the live shooting
21 events that -- I am going to take it from your SWAT
22 exercises. Is there any way that we could look at
23 your records and find out the last time prior to
24 March 30th you may have used that rifle in a live
25 shooting exercise?

1 A. It is possible. Oftentimes -- we usually
2 have -- we try to remember to fill out an F6 through
3 the DPSST to submit fire training records for the
4 day. It usually explains what our training was for
5 that day. Whether that happened or not, I don't
6 know.

7 Q. Okay.

8 A. So I guess going through our training
9 records through the training department would
10 probably be your best source of trying to find that
11 information.

12 Q. Well, you heard me ask Officer Grose about
13 his training. I can get all your DPSST training
14 records online, and I normally do that anyway, but
15 are there other training -- trainings that you may
16 have gone through that would not necessarily have
17 been submitted to DPSST?

18 A. Yeah. Some of our SWAT training days,
19 especially if it is -- well, once in a while we will
20 have an equipment day or some of our other training,
21 if it is put on maybe by somebody that doesn't
22 normally put on training or it is -- you know, there
23 may not have been an F6 filled out and submitted to
24 DPSST. Again, we try to be -- make sure we get that
25 done, but again, it doesn't -- doesn't always

1 happen.

2 Q. Sure.

3 A. Sometimes people forget to -- forget to do
4 things so --

5 Q. But if you are doing training and you want
6 to get paid for that day, do you have to submit some
7 kind of records to the department?

8 A. We turn in -- fill out our time sheet.

9 Our time sheet doesn't necessarily -- when it is a
10 regular day that we work, it won't necessarily have
11 a -- there may be different hours, like if we work
12 different hours that day than our normal patrol
13 shift, but there won't necessarily be anything else
14 to indicate that -- what specifically we did that
15 day.

16 Q. So the time sheet wouldn't show that you
17 were out shooting on the range for SWAT?

18 A. No.

19 Q. Okay. All right. What is the minimum
20 qualification score when you are shooting with the
21 long rifle?

22 A. I don't remember.

23 Q. You have always qualified?

24 A. Yes.

25 Q. And at what distance are you having to

1 qualify?

2 A. With the rifle, we start -- start at a
3 hundred yards and work in from there.

4 Q. A hundred yards?

5 A. There is different stations.

6 Q. Wow. That is a long distance with a
7 rifle. Okay.

8 So back to this date.

9 A. Okay.

10 Q. You had your SWAT rifle. What was the
11 make and model of that rifle?

12 A. It was an HK, Heckler Koch, 416 .223
13 caliber rifle.

14 Q. And you had fired that weapon before this
15 date?

16 A. Yes.

17 Q. Okay. And I understand that Officer Kidd
18 was given a long rifle from Sergeant McAlpine. Did
19 you see that happen?

20 A. I did not see it happen, no.

21 Q. Are you aware that it happened?

22 A. Yes.

23 Q. All right. Any other officer that you
24 know who was on that scene who had their long rifle
25 with them?

1 A. Not that I know of. I couldn't see the
2 other officers on the perimeter positions, and the
3 other officers that showed up after we got into
4 position with the BearCat, I wasn't looking behind
5 me really to see what they were doing.

6 Q. Okay. So it seems to me after talking to
7 all of the officers that everyone parked away from
8 the actual Babb address. Is that correct?

9 A. Yes.

10 Q. And why is that -- why do you park away
11 from the address that you are investigating?

12 A. Well, we don't want the person or people
13 inside to basically be waiting for us to show up and
14 basically have a big police car to target right
15 away.

16 Q. Okay. So if all of the officers then
17 walked to this -- the address -- and I am using 2244
18 because that sounds like where you all converged
19 originally. The officers who would have had their
20 rifles, you would have expected them to bring them
21 with them to the driveway here to this location?

22 A. Yes.

23 Q. And you said that Officer Kidd had a less
24 lethal?

25 A. Officer DeWitt.

1 Q. DeWitt. I am sorry.

2 Anybody else bring a less lethal?

3 A. I had my TASER. There were several other
4 officers there that had TASERS as well.

5 Q. When did you get certified on the TASER?

6 A. I don't know specifically. It would have
7 been -- it was after I completed the -- basically
8 completed my rotation or probationary period, I
9 think. It was sometime after that that I went
10 through the TASER course through the department. So
11 18 plus months after my initial hire.

12 Q. Okay. Are all officers with Eugene
13 required to become certified on the TASER?

14 A. I don't know if that is a requirement now.
15 I think all of the new officers are being certified
16 in TASER. I am not sure if it is a requirement for
17 everybody to be certified with it or not.

18 Q. At one point in time, I snuck into a TASER
19 conference, and there was some discussion about
20 officers in the certification training getting tased
21 themselves. It wasn't mandatory. Did you get tased
22 in the training?

23 A. No.

24 Q. Okay. So you were placed up in the turret
25 of the BearCat once it arrived. Tell me what you

1 could see of the front of the house from the turret.

2 A. From the front of the house, kind of the
3 top -- I could see all of the upper windows. There
4 was a -- on the left side facing the house, which
5 would be I guess the south side of the house, there
6 is -- it appeared to be a big bedroom window that
7 the blinds were open. I am not sure if the window
8 was open or if there were just no blinds, but you
9 could see a big dark room inside.

10 Next to that, a little ways to the right
11 in the middle was a smaller window that, based on
12 the size, it looked like maybe a bathroom type
13 window or something.

14 And then to the right of that was another
15 like a room-sized window that had some blinds closed
16 covering it from the inside.

17 On the bottom floor, first floor, there
18 was a large like picture window on the south side of
19 the house on the left.

20 Q. On the left as you look at the house?

21 A. Yes.

22 Q. That is not where the garage is?

23 A. I don't remember specifically seeing the
24 garage. I remember there was also a large RV-type
25 trailer or something.

1 Q. Okay.

2 A. I remember seeing a -- my impression was
3 of a larger window which -- possibly like a living
4 room type window.

5 Q. Okay.

6 A. Next to that was the front door. I
7 remember it had kind of a porch -- small overhang
8 coming off it with some pillars coming down from the
9 sides. And I can't remember if there was another
10 window off to the right of that.

11 I remember there was kind of a -- kind of
12 in that same area on the right side of the house
13 there was a tree that kind of branched -- you know,
14 went up and kind of branched off a little bit. Some
15 of those branches were covering parts of that window
16 that had the blinds closed and covering it, but I
17 could see most of the window kind of through those
18 branches in that tree.

19 Q. How tall are you, Officer?

20 A. Six foot.

21 Q. Six foot even?

22 A. Yes.

23 Q. Okay. Could you see the bottom of the
24 doorjamb of the front door?

25 A. No.

1 Q. This is an awkwardly asked question, and I
2 will admit it right up front. How much of that door
3 could you see standing in the turret of that
4 BearCat?

5 A. So I would estimate about half the door,
6 the top half of the door. I could see about the
7 door handle up.

8 Q. Okay. In the BearCat, at least the day
9 that we looked at it and did our evaluation, there
10 was a stool, a step stool. Did you stand on that
11 step stool?

12 A. I did not.

13 Q. So all of this that you are telling me you
14 could see, you were flatfooted in the BearCat?

15 A. Yes. I pulled the stool out in case I
16 felt like I needed to get higher in there, and I may
17 have initially stepped up to see if that gave me a
18 better position, but it felt like it just put me up
19 too high, so I stepped off that. But I left the
20 stool in the position directly under the turret
21 there, and then from there I could see out the top
22 of the vehicle.

23 Q. Now, the turret has a hatch that comes up.
24 Does it move? Does the hatch move?

25 A. It does.

1 Q. And obviously it was open when you were
2 standing in the turret area. Did you move that lid,
3 that hatch, at all?

4 A. I did.

5 Q. And could you tell me in what position --
6 if you pretend that you are looking at Mr. Babb's
7 house, pretend you are in the turret and you are
8 looking at Mr. Babb's house, where is that hatch lid
9 positioned?

10 A. So basically I positioned it so it was
11 kind of, from what I remember, basically flat facing
12 the -- facing the front of the house, and I just
13 kind of leaned just a little bit just so that, you
14 know, just the side of my head and face was exposed.
15 I was trying to expose as little as possible during
16 that incident.

17 Q. Now, Officer Grose testified that he was
18 confident in the ballistic resistance of that
19 armored vehicle. Were you equally confident in its
20 ability to withstand gunfire?

21 A. In the vehicle's ability to withstand
22 gunfire, yes. Kind of the biggest thing that gave
23 me some concern there was in order to see any of
24 this house, I still had to have part of my head
25 exposed and in view, and I couldn't see inside the

1 windows or inside the house to see where anyone was
2 unless they were right up front up close to the
3 doors or windows.

4 Q. Where did you keep your rifle while you
5 were up in that turret?

6 A. I kept it -- I rested my hand on the edge
7 of the turret and then -- so I rested the rifle on
8 the edge of that, just on the right side of the
9 hatch. The reason I did that is because the way the
10 hatch is, if I did need to address a deadly threat
11 quickly, trying to bring the rifle up through that
12 wouldn't have been possible. It would have jammed.
13 It would have -- could have possibly hurt somebody
14 inside if there was an accidental discharge or
15 something. So having it just to the right side for
16 me, the right side of the lid, basically just
17 resting there with the safety on while I kind of
18 kept my head up trying to watch -- watch what was
19 going on at the house.

20 Q. Is this rifle a semi-auto?

21 A. Yes.

22 Q. And you had a round chambered?

23 A. Yes.

24 Q. Did you do that inside the turret while
25 you were standing there or before you went up?

1 A. I did that back when I was at my vehicle.

2 Q. Okay. And so the barrel -- so was the
3 entire rifle then out ready to be used?

4 A. Yes.

5 Q. Okay. And you had it resting on one -- on
6 the hand that you had on the turret?

7 A. Yeah, off and on. If I needed to try and
8 talk on my radio, I would have to rest the front of
9 the gun basically on the metal top part of the
10 turret or hatch there. But yeah, my right hand
11 stayed on the handle controlling the -- making sure
12 the safety stayed on and --

13 Q. On the rifle?

14 A. Yeah.

15 Q. Are you right-handed?

16 A. Yes.

17 Q. And -- okay. At what point in this
18 proceeding did you actually get up inside the
19 turret? And there are different markers that the
20 different officers have given us. Officer Grose was
21 talking on the phone. There was hailing going on on
22 the loud speaker. I mean, there were different
23 things going on. In that process, do you recall
24 what was going on when you got up in the turret?

25 A. I didn't get up there until the BearCat

1 was set, and I don't remember -- I don't believe it
2 made any more movements once I got up there until we
3 decided to move on the house. If it did, they would
4 have been very, very minor and -- but I don't
5 specifically remember any of that. It was before
6 any hails started.

7 Q. Was it before Mr. Antonini came out?

8 A. Yes.

9 Q. Was it before Officer Grose started making
10 calls trying to call Mr. Babb?

11 A. I am not sure when Officer Grose started
12 trying to call him.

13 Q. So you are up in the turret, and I
14 understand that you are on a fairly high level of
15 alert while you are up there, because theoretically
16 you could be a target easier than some of the other
17 officers. Could you hear what was going on down in
18 the BearCat?

19 A. Portions of it, yes.

20 Q. Tell me what you remember hearing.

21 A. So I remember just kind of the continuing
22 discussion of, you know, kind of trying to -- how we
23 are going to resolve this. I don't remember
24 specifically what was said.

25 I remember once I got up there and set, at

1 some point that is when Officer Grose started
2 hailing the house. And those were fairly loud from
3 my position, because the speaker is attached
4 outside, so that kind of drowned a lot of what
5 was -- kind of what other people were talking about,
6 if anything.

7 Q. Now, I know your focus was then on the
8 house. Once you are up in the turret, can you see
9 any other officers around you?

10 A. I can see Officer Kidd on the roof of
11 2244.

12 Q. What was his physical position when you
13 saw him at that point?

14 A. I remember him -- he was trying to -- he
15 appeared to be laying down or trying to kind of hide
16 behind the chimney and the peak of the roof. He was
17 trying to stay in a position where he wasn't too
18 exposed but where he could still see -- get some
19 view of the front of the house. And we were kind of
20 having the discussion, some over the radio and with
21 him and Officer Farley in between us that he was
22 kind of having a difficult time seeing, especially
23 parts of the front door, due to those pillars that
24 were kind of holding up that overhang.

25 Q. Is that why Farley was going to go up on

1 the roof of this house to the north of 2244?

2 A. I believe so. I knew they were having
3 that discussion of trying to get a better view of
4 where -- trying to get the best view possible. And
5 Officer Kidd said that his view wasn't the best, he
6 felt, and so he thought maybe Officer Farley could
7 find a better vantage point from his position
8 somewhere to the north.

9 Q. Okay. Now, there has been testimony that
10 Mr. Babb came out of the front door at least twice.
11 Do you remember two visits by Mr. Babb to the front
12 door?

13 A. I remember him opening the door, coming to
14 the front door. I don't remember if he actually
15 came out of the house or not, but I just remember
16 him kind of at that threshold doorway area.

17 Q. What did he do?

18 A. Yelling at us to go away and slamming the
19 door.

20 Q. At some point after the hailing on the
21 loud speaker, Mr. Antonini did exit the house, did
22 he not?

23 A. He did.

24 Q. Did you see him do that?

25 A. Yes.

1 Q. Tell me -- did Mr. Babb come to the door
2 with Mr. Antonini?

3 A. No.

4 Q. Mr. Antonini just opened the door and
5 walked out?

6 A. He didn't just walk out. He -- when he
7 came to the door, it looked like he was kind of
8 looking back inside. And as some of the hails
9 continued, he came back to the BearCat, but he kept
10 kind of looking behind him. As he got closer, I
11 could hear Mr. Antonini saying that he is going for
12 his guns, he is -- you know, he is going for his
13 guns inside.

14 Q. Was Mr. Antonini running?

15 A. I don't think he was running.

16 Q. Was his -- were his hands up?

17 A. Yeah, he was keeping his hands up.

18 Q. Was he looking at you guys at all?

19 A. Yeah. I think he was kind of dividing his
20 attention, it felt like, between trying to see where
21 he was going towards us and looking back at the
22 house.

23 Q. So you could hear Mr. Antonini as he is
24 moving towards you saying, "He is going for his
25 guns, he is going for his guns"?

1 A. Yes.

2 Q. Okay. And did you keep track of
3 Mr. Antonini all the way down the driveway?

4 A. Yes. I kept track of him until -- it was
5 pretty apparent initially that he was compliant
6 with -- he was doing what we asked him to. He was
7 coming out. He kept his hands up. I didn't see any
8 obvious weapons on him at all. So once he got -- I
9 was -- as he was coming towards us, I was kind of
10 dividing my attention between him and the rest of
11 the house. Once he got basically past my view or
12 past the front of the BearCat, I focused more of my
13 attention on the house again and let the other
14 officers that were on the ground kind of deal with
15 Mr. Antonini.

16 And at some point I remember them putting
17 him in the back, where they continued to talk to him
18 about what is going on.

19 Q. Could you hear any of that conversation
20 between Mr. Antonini and the officers?

21 A. Portions of it, yes.

22 Q. Tell me what you remember hearing.

23 A. I remember officers -- I can't remember
24 who was asking who the questions. I couldn't tell.
25 I remember Mr. Antonini saying that Mr. Babb had,

1 you know, numerous rifles in the house. I remember
2 specifically he -- him saying that he doesn't have
3 any assault rifles, but he has hunting rifles. For
4 me -- you know, a hunting rifle is generally a
5 larger -- larger caliber and with a higher power
6 scope that could be more dangerous to us and other
7 people, especially in this setting where these rooms
8 and these open windows are dark and you can't really
9 see inside. And somebody can be standing basically
10 in the shadows, and you would never be able to see
11 them.

12 Q. Okay. Do you remember anything else that
13 Mr. Antonini shared with the officers?

14 A. Off the top of my head, I don't. I
15 remember there was some more that I mentioned in my
16 initial statement, but right now it is not -- it is
17 not coming to mind.

18 Q. Okay.

19 A. Sorry.

20 Q. Do you remember hearing Mr. Babb yelling
21 anything inside the house?

22 A. Yes.

23 Q. Could you tell me -- could you make out
24 what he was saying?

25 A. He was yelling at us to go away, not to

1 come inside, using lot of profanity.

2 I remember after Mr. Antonini left, he
3 left the door open. At some point Mr. Babb came to
4 the door yelling at us again, and he slammed the
5 door behind him. And then several times during the
6 course of events, he was either in an upstairs
7 window or would come back to the door.

8 Q. So how many times -- including the time
9 Mr. Babb was shot, how many times did you see
10 Mr. Babb in the doorway?

11 A. I don't remember specifically. I remember
12 at least twice. I can't remember if there was more
13 than that or not.

14 Q. Okay. So the -- what you have just told
15 me about Mr. Babb coming to the doorway to shut the
16 door after Antonini left, was that one of those two
17 times or was that a different time?

18 A. That was one of those two times.

19 Q. Okay.

20 A. And I can't remember if he came to the
21 door at any point before then or if that was a -- or
22 if he came to a window kind of before Mr. Antonini
23 came out.

24 Q. Okay. Now, Officer Kidd testified that he
25 saw Mr. Babb come to the door at least once before

1 you shot Mr. Babb. Do you know -- did you know what
2 Officer Kidd was talking about? Do you remember
3 that?

4 A. The one I specifically remember is that --
5 when Mr. Babb came to the door after Mr. Antonini
6 left where he yelled at us and then slammed the door
7 shut behind him.

8 Q. In that particular appearance, did
9 Mr. Babb have a weapon with him?

10 A. No.

11 Q. Do you remember what Mr. Babb was wearing?

12 A. Not specifically. I remember it was -- I
13 could only see about the top half of him. I
14 remember I couldn't see legs or waist at all. I
15 just remember the sweatshirt was kind of a -- or the
16 shirt or sweatshirt -- I may have transposed that
17 with reading all of the reports. I am sorry.

18 Q. That is part of the risk of --

19 A. But I remember the shirt -- whatever he
20 was wearing on top was kind of a darker color that
21 seemed to blend into the background a bit. The
22 inside of the house seemed kind of dark.

23 Q. Okay. Then on that last visit to the
24 door, tell me what happened.

25 A. So the last time he came to the door, I

1 remember he -- the door opening. He came to the
2 door. And it seemed like a long time. I really --
3 in realtime I am not sure what -- how long that was.
4 It took my mind what felt like seconds, a few
5 seconds to process what I was seeing.

6 But I remember seeing Mr. Babb at the door
7 with a rifle up to his shoulder. It was a large
8 black rifle. I could see the hole in the barrel of
9 the gun. I could see it had a scope on it. I can't
10 remember if he was looking through the scope or not.
11 He had it up in a firing position. I have -- I
12 remember feeling the impression that at least part
13 of the rifle was kind of covering part of his face,
14 so I remember thinking that I didn't want to hit --
15 if I needed to or when I needed to shoot, I didn't
16 want to hit the rifle and have it ricochet and
17 possibly injure him, which would give him the
18 opportunity to basically go back inside or start
19 shooting from where he was.

20 I remember his -- basically the things
21 that stood out were that rifle right there and then
22 his head right there. Kind of the rest of him just
23 seemed to just blend into the background.

24 And I remember thinking that -- you know,
25 in my head, that this is -- this is taking too long.

1 Tried -- I remember trying to yell "Drop the gun" or
2 something similar. I don't remember if that ever
3 came out or not.

4 And then kind of during this whole thing I
5 am thinking I am too late. He is going to shoot me,
6 and then he is going to start, you know, shooting
7 everybody else, so that is when I took the shot.

8 Q. Have you ever shot anybody before?

9 A. No.

10 Q. So I need you to do something for me right
11 now. I need you to stand up, face the camera, and I
12 need you to, to the best of your ability, assume the
13 position that Mr. Babb had when you saw him with the
14 rifle.

15 A. Okay. To the best of my remembrance, it
16 was up like this.

17 Q. Was it pointed upward towards anywhere in
18 particular?

19 A. It felt like it was pointed at me, so you
20 know, it could have been up like this from -- I
21 estimate our distance to be about 25 to 30 yards.
22 And I know for -- you know, from our practice with
23 the rifles and stuff, that the farther distance you
24 go, you know, angle -- slight angle adjustments
25 aren't as obvious, you know, from a distance as they

1 are up close. So again, I guess if it was like that
2 or like that -- you know, it was kind of in this
3 general area somewhere.

4 Q. So your shot went through his cheek and
5 came out his neck, so I am trying to get, the best
6 of your ability, to tell me which way he might have
7 been located in the doorway.

8 A. Okay.

9 Q. I am going to show you a couple pictures.
10 You need a break? You doing okay?

11 A. I am okay.

12 Q. Okay. Have you reviewed the autopsy
13 report in this case?

14 A. No.

15 Q. Was Mr. Babb inside the doorjamb inside
16 the house, or was he out on the porch?

17 A. I couldn't tell. From my position, it
18 looked like he was taking up the doorway, but I
19 couldn't tell if he was outside the doorway or just
20 inside.

21 Q. Okay. So this is from a shooting
22 reconstruction. You have heard me give the
23 explanation. This is a page I have not copied for
24 an exhibit. And your round went into his left face
25 right about the cheekbone there, and it came out

1 through the neck.

2 A. Okay.

3 Q. So I am trying to figure out what you
4 remember about how he was squared up in the doorway,
5 how he was facing.

6 A. To the best of my remembrance, it appeared
7 that he was looking either at me or at the BearCat
8 with the rifle pointed in my direction.

9 Q. Was the side of his face towards you at
10 all?

11 A. What I remember seeing, kind of like I
12 said before, the rifle -- I had the impression that
13 the rifle was obscuring at least part of the right
14 side of his face, so I guess when you say the side,
15 I mean -- you know, I remember this.

16 Q. Okay. Was he -- was he -- he had the butt
17 of the gun in his shoulder?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes. Sorry.

21 Q. Was his head down, as if he was looking in
22 the scope?

23 A. I don't remember. Like I said before when
24 I stood up, I couldn't remember if his head was down
25 looking through the scope or if it was up looking

1 over that.

2 Q. So this, again, is a computer-generated
3 rendition based on the trajectory of the bullet and
4 all of the information that we have available to us
5 when we did this, and there was a bullet hole in the
6 back wall of the living room, and then we knew
7 approximately where you were and we knew the
8 trajectory through Mr. Babb's body. If you could
9 take a look at this position of Mr. Babb in the
10 doorway as our computer has generated it, does that
11 look approximately the position that Mr. Babb had
12 when you shot him?

13 A. It could be approximate. Again, I don't
14 know his specific, you know, body position as far
15 as, you know, which way -- this way, I guess, you
16 know, specifically, but I think generally this
17 appears close. But again, I couldn't tell how far
18 in or out of the doorway he was.

19 Q. Okay.

20 MS. BURROWS: Do you want to see?

21 MR. SCHMIDT: Sure. Thanks.

22 BY MS. BURROWS:

23 Q. I am sure that you have been told -- but I
24 don't know -- that we have at least one, possibly
25 two neighbor witnesses who actually saw Mr. Babb

1 come to the door when you shot him, and they say
2 that the rifle was strung over Mr. Babb's back. Is
3 it possible that you saw the barrel of the rifle
4 behind Mr. Babb?

5 A. No.

6 Q. Okay. And when you saw Mr. Babb in the
7 doorway -- let's slow it down a little bit. You
8 were hiding -- you were concealed behind the round
9 lid, the -- and did you actually see him open the
10 door and come out?

11 A. I don't remember seeing the door open. I
12 remember looking and seeing him standing there with
13 the rifle raised.

14 Q. And he already had the rifle raised when
15 you first saw him?

16 A. Yes.

17 Q. You didn't see him actually raise it to
18 a raised position?

19 A. Not that I remember.

20 Q. Okay. Now, you did do a report or you
21 gave a statement to the investigators afterwards.
22 Have you had a -- you reviewed it. Was there
23 anything in the statement that you gave that you
24 feel was inaccurate or needed to be modified or
25 adjusted or changed?

1 A. Not that I remember from my review of it.

2 Q. So I have got some weird report documents
3 here from your statement, and I want to show you
4 what I have got. Did you -- did you also give a
5 statement to the shooting review folks?

6 A. No.

7 Q. So I have got -- let's mark this the next
8 in order. Let me get all of the right pages here.
9 It is Bates stamped pages 588 to 594.

10 (Deposition Exhibit No. 46 marked
11 for identification.)

12 BY MS. BURROWS:

13 Q. Could you take a look at this and see if
14 this is the statement document you reviewed in
15 preparation for your deposition?

16 MS. BURROWS: I'm just going to give
17 you the whole thing.

18 MR. SCHMIDT: Thanks. Through -- he
19 is just looking at through 594? Is that the whole
20 thing?

21 MS. BURROWS: No. I just gave him his
22 pages of his statement.

23 MR. SCHMIDT: All right.

24 A. This looks like the document that I
25 reviewed.

1 BY MS. BURROWS:

2 Q. Are there any other documents of your
3 statements that were created that you know about?

4 A. Not that I am aware of.

5 Q. Was your statement recorded?

6 A. I don't believe so.

7 Q. So most departments will record an officer
8 who is involved in a shooting. Your department
9 didn't do that?

10 A. I don't believe so.

11 Q. Okay. Were you given some time off? Were
12 you put on leave after the shooting?

13 A. Yes.

14 Q. How much time were you given off?

15 A. I think I was -- it ended up being about
16 six weeks of admin leave, and then I had a planned
17 two-week vacation at the end of that that I
18 completed, so a total of eight weeks, I believe.

19 Q. And are you required to get any counseling
20 by your department after you are involved in a
21 shooting?

22 A. Yes.

23 Q. And did you, in fact, get that counseling?

24 A. I did.

25 Q. Do you have to be cleared to come back to

1 work after you get the -- you are involved in a
2 shooting?

3 A. Yes.

4 Q. And who clears you to come back to work?

5 A. I don't remember who it was. It was a
6 psychiatrist's office in Portland that the City
7 contracts with.

8 Q. Oh, okay. Did you have to go through --
9 do a psychological evaluation?

10 A. Yeah. There is some questions and answers
11 and some forms to fill out.

12 Q. And psychologically how have you been
13 since the shooting?

14 A. I have been okay.

15 Q. Do you have any -- any nightmares or
16 flashbacks?

17 A. No.

18 Q. Do you have -- how do you feel about the
19 fact that you killed somebody?

20 A. I don't feel good about it.

21 Q. Okay. But how do you feel?

22 A. So kind of like I said before, I don't
23 feel good about the outcome of this. I don't feel
24 good about what happened. I am glad that I am okay,
25 my other officers are okay, and that the surrounding

1 citizens weren't hurt.

2 Q. Does it cause you emotional distress
3 knowing that you have taken someone's life?

4 A. I wouldn't say it causes me any distress.
5 It is -- unfortunately, it is part of -- it could be
6 a part of our job doing this, part of protecting the
7 community, ourselves, and other officers, and if
8 somebody's actions determine that we need to use
9 deadly force, we need to be prepared to do that so
10 that somebody doesn't get hurt or killed that
11 shouldn't be.

12 Q. Okay. Have you ever had -- besides this
13 time with Mr. Babb, have you ever had anyone point a
14 weapon at you?

15 A. Not that I can recall specifically. We
16 have been -- I have been involved in several
17 high-risk incidents where people have either been
18 armed or had their weapons out that were -- they
19 followed commands, did what they were supposed to,
20 and we were able to take them into custody.

21 Q. Now, after you fired at Mr. Babb, you have
22 heard the various officers testify that there was a
23 little bit of confusion about who fired.

24 A. Yes.

25 Q. Tell me what those moments were like right

1 after you fired and this confusion is going on.

2 A. So in the first moments after, I just took
3 a breath just to kind of calm myself, because I knew
4 that I needed to get on the radio and kind of say
5 what happened. I remember when I tried doing
6 that -- when I tried to talk on the radio, I kind of
7 got the tone that wouldn't allow me to talk at all.
8 I remember -- and then there was some -- a lot of
9 chatter on the radio trying to figure out what had
10 happened. I tried a couple times to get on the air
11 to clarify that and whether -- and I am not sure
12 exactly why it didn't come across.

13 I remember talking -- Officer Kidd asked
14 me if I shot at one point. I said I did. And I
15 remember hearing the other discussions behind us,
16 and I -- not on the air, but said, "Yeah, that was
17 me." So for me it was a little frustrating that
18 this wasn't getting through, that there was this
19 kind of confusion.

20 Once -- once the roll call got initiated,
21 I wanted to make sure we got that completed. That
22 way we had everybody accounted for. When there
23 still was some of that confusion, I finally had to
24 kind of put my head down through the hatch and kind
25 of yell back at the officers that, "Hey, that was --

1 "That was me. That was my shot."

2 Q. Okay. Were you separated from your other
3 officers right away?

4 A. Not right away.

5 Q. Did you talk to someone at the moment?
6 Let me strike that. Back up.

7 The BearCat moved forward at about that
8 time, didn't it?

9 A. Shortly after that, yes.

10 Q. Did you get out of the turret before it
11 moved?

12 A. Yes.

13 Q. Okay. And did you ride in the BearCat all
14 the way up to the house?

15 A. Yes.

16 Q. And officers were able to confirm that
17 Mr. Babb was dead. Correct?

18 A. Yes.

19 Q. And at some point were you separated from
20 the officers and removed from the scene?

21 A. Yes.

22 Q. And who did that?

23 A. Initially -- so we get up to the house,
24 and I get back up in the turret to provide overwatch
25 for everybody while they start to kind of clear the

1 house. It becomes pretty clear that they don't have
2 enough people to kind of deal with it initially. I
3 know at some point that I am going to get, you know,
4 kind of removed from the scene, but we still have a
5 job to do to finish seeing this through. So I go up
6 to the doorway to help clear if I need to, and that
7 is when Sergeant McAlpine tells me that, you know,
8 "Go stand down. Go wait with Officer Grose in the
9 back of the BearCat." And I knew from that point,
10 then, that we were trying to basically figure
11 out whether we were going to wait there at the scene
12 or whether we were going to go back to the police
13 department for the rest of the investigation.

14 So I walked back to the back of the
15 BearCat, secured my rifle, cleared -- emptied it,
16 left it back there with Officer Pieske, and then
17 waited at the end of the driveway with Officer Grose
18 until Officer Warden arrived. And then from there,
19 Sergeant McAlpine took all of us, and we went back
20 to the police department.

21 Q. Were you interviewed the same day of the
22 shooting?

23 A. No.

24 Q. Okay. How long after the shooting were
25 you interviewed?

1 A. It looks like it was April 2nd.

2 Q. Did you -- are you a member of the union?

3 A. Yes.

4 Q. Did you have a union representative
5 present at the interview?

6 A. Yes.

7 Q. It looks like there is a whole bunch of
8 people at your interview. Detective Dusty Sprague,
9 was he -- what was his role?

10 A. He was the primary IDFIT investigator for
11 Oregon State Police.

12 Q. And Ed Imholt?

13 A. I believe he was an assistant or assisting
14 Detective Sprague with the interview and the
15 investigation.

16 Q. And Jed McGuire was your rep?

17 A. Yes.

18 Q. And you also had a lawyer?

19 A. Yes.

20 Q. Now, so it wasn't that many days after the
21 shooting that you were interviewed?

22 A. No.

23 Q. And were you given your Garrity warnings
24 before this interview?

25 A. What are the Garrity warnings? I am --

1 Q. Like if you don't answer questions, you
2 can be disciplined.

3 Were you given Miranda warnings, any of
4 that?

5 A. I don't remember any Miranda warnings.
6 This wasn't a forced interview or anything.

7 Q. Okay. So --

8 A. So I don't remember any specific warnings
9 like that, I guess.

10 Q. Okay. And you were off for approximately
11 six weeks. Was that because the investigation was
12 lasting that long?

13 A. Part of it. I remember it took about four
14 weeks for the DA's office to come back with their
15 ruling on the incident. And then from there, I
16 wanted to make sure that my family was ready for me
17 to go back to work, too, and that -- it kind of took
18 some time for that, especially with some -- it was
19 pretty heavily covered in the news, and it seemed
20 like every couple weeks there was another news
21 article coming out.

22 Q. Did your family get any threats or --

23 A. I did, yeah.

24 Q. You did? What kind of threats did you
25 get?

1 A. I don't remember the specific threats. I
2 remember Lieutenant Bills telling me that somebody
3 had made some threats to -- basically some death
4 threats of some kind. I don't think I ever knew the
5 specifics of them, but they were serious enough to
6 where the department offered to have some cameras
7 installed at our home and provided the other law
8 enforcement agencies in our -- where we live, kind
9 of an update of our -- of where we lived and what
10 was going on in case something did happen.

11 Q. At the time, did -- were your -- do you
12 have kids?

13 A. Yes.

14 Q. Were they in school?

15 A. Yes.

16 Q. Were there threats being made against your
17 children?

18 A. None that I am aware of.

19 Q. And the threats that you were aware of
20 were being made through the department, or were they
21 being made to you via email or text or calls or --

22 A. We were getting them -- I was getting them
23 through the department. There was none specifically
24 that I received personally.

25 Q. Okay. And Lieutenant Bills is the one who

1 shared the type of threats you were getting?

2 A. Yeah. And again, I don't remember the
3 specifics of them, but the nature was some death
4 threats towards me specifically.

5 Q. Okay. Was there a period of time that
6 those threats were being made?

7 A. After the incident.

8 Q. And for what -- for how long? You are not
9 still getting death threats, are you?

10 A. No, I am not.

11 Q. Okay.

12 A. I don't remember how long they went on.
13 It seemed like there was at least several weeks, you
14 know, afterwards, and then we kept the cameras
15 around for a while. I guess once things kind of
16 calmed down -- I can't remember how long exactly we
17 had them there, but we went and purchased our own
18 cameras to have at our place kind of spurred partly
19 because of that so that we weren't relying on the
20 department equipment.

21 Q. And was your wife afraid for everybody's
22 safety?

23 A. Yes.

24 Q. Were there -- but they -- you all stayed
25 in your house during all that time?

1 A. Generally, yeah, we did.

2 Q. I mean, you didn't send your wife and kids
3 away?

4 A. (Shakes head.)

5 Q. Okay. Were there officers assigned to
6 protect you?

7 A. No.

8 Q. Okay. Well, I am sorry that that
9 happened. That was wrong.

10 A. Thank you.

11 Q. Let's just take a little bit of a break
12 and see if there is anything more that I want to
13 talk to you about.

14 A. Okay.

15 Q. Thank you, Officer.

16 A. Thank you.

17 THE VIDEOGRAPHER: We are going off
18 the record. The time is 3:12 p.m.

19 (Recess: 3:12 to 3:32 p.m.)

20 THE VIDEOGRAPHER: Okay. We are back
21 on the record. The time is 3:32 p.m.

22 BY MS. BURROWS:

23 Q. Just a couple follow-up questions, Officer
24 Stutesman.

25 Was there a grand jury convened over this

1 shooting?

2 A. I don't know. I don't believe so.

3 Q. Do you remember testifying for Mr. Gardner
4 or any of the prosecutors on this case?

5 A. No.

6 Q. Okay. I have no more questions. Thank
7 you so much.

8 A. Thank you.

9 MR. SCHMIDT: I don't have any
10 questions, but we will reserve his right to read and
11 sign his deposition.

12 MS. BURROWS: Thank you.

13 THE WITNESS: Thank you.

14 THE VIDEOGRAPHER: And we are going
15 off the record. The time is 3:33 p.m.

16 (The deposition was concluded at
17 3:33 p.m.)

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1 State of Oregon)
2) ss.
2 County of Lane)

3 I, Christine Oljace, CSR-RPR, a Certified
4 Shorthand Reporter for the State of Oregon, certify
5 that the witness was sworn and the transcript is a
6 true record of the testimony given by the witness;
7 that at said time and place I reported by stenotype
8 all testimony and other oral proceedings had in the
9 foregoing matter; that the foregoing transcript
10 consisting of 72 pages contains a full, true and
11 correct transcript of said proceedings reported by
12 me to the best of my ability on said date.

13 If any of the parties or the witness requested
14 review of the transcript at the time of the
15 proceedings, correction pages are attached.

16 IN WITNESS WHEREOF, I have set my hand this 30th
17 day of October 2017, in the City of Eugene, County
18 of Lane, State of Oregon.

19

20

21



22 Christine Oljace, CSR-RPR

23 CSR No. 05-0397

24 Expiration Date: September 30, 2018

25

1 Will Stutesman

2 McGowan, et al., vs. Stutesman, et al.

3 October 19, 2017

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18 I declare under penalty of perjury that the 72
19 pages referenced above are true and correct except
20 for such corrections as noted. Executed this

21 day of 2017.

22 | |

23 Will Stutesman

24

25